

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RON GASS d/b/a GASS
CONCRETE CONTRACTORS

and

Case 14--CA--20884--14

EASTERN MISSOURI LABORERS
DISTRICT COUNCIL & AFFILIATED
LOCALS 42, 53, AND 110

DECISION AND ORDER

By Chairman Stephens and Members Severney and Raudabaugh
Upon a charge filed by the Union July 18, 1990, the General Counsel of

the National Labor Relations Board issued a complaint against Gass Concrete Contractors, the Respondent, alleging that he has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On October 9, 1990, the General Counsel filed a Motion for Default Summary Judgment. On October 11, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that counsel for the General Counsel, by telephone call and letter dated September 24, 1990, notified the Respondent that unless an answer was received by close of business September 28, 1990, a Motion for Default Summary Judgment would be filed. The Respondent has failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a sole proprietorship owned by Ron Gass, has an office and facility in Festus, Missouri, where he has been engaged as a concrete contractor in the building and construction industry. During the 12 months preceding the issuance of the complaint, the Respondent has performed services valued in the aggregate in excess of \$50,000 directly to various enterprises located within the State of Missouri, including Taylor-Morley, Simon; Bruton Builders; and Legacy Homes, each of which enterprises satisfies an appropriate standard for the assertion of jurisdiction by the Board other than solely an indirect standard. We find that the Respondent is an employer engaged in

commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

On or about June 25, 1989, the Union and the Respondent, pursuant to Section 8(f) of the Act, executed an interim agreement binding the Respondent to the terms of a collective-bargaining agreement to be negotiated by the Union and the Associated General Contractors of St. Louis, and which was effective by its terms from May 1, 1989, through May 1, 1992. On October 9, 1989, the Union and the Associated General Contractors of St. Louis reached full and complete agreement with respect to the terms and conditions of employment to be incorporated in a collective-bargaining agreement. The unit of the Respondent's employees covered by the collective-bargaining agreement constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. During the terms of both the interim agreement and the collective-bargaining agreement, the Union has been, and is, the limited exclusive representative of the unit employees for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. John Deklewa & Sons, 282 NLRB 1375, 1386--1388 (1987), enfd. sub nom. Iron Workers Local v. NLRB, 843 F.2d 770 (3d Cir. 1988).

Since on or about January 25, 1990, pursuant to the terms of the interim agreement, the Union has requested the Respondent to execute a written contract embodying the provisions of the collective-bargaining agreement between the Union and the Associated General Contractors of St. Louis. Since on or about January 25, 1990, the Respondent has failed to execute such a written contract.

We find that, by the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of his employees by failing to execute a written contract embodying the collective-bargaining agreement reached between the Union and the Associated General Contractors of St. Louis on October 9, 1989, and the Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act as alleged.

Conclusions of Law

By failing and refusing to bargain collectively and in good faith with the representative of his employees by failing to execute a written contract embodying the collective-bargaining agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order him to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to execute the collective-bargaining agreement reached between the Union and the Associated General Contractors of St. Louis on October 9, 1989, if the Union so requests, and to give retroactive effect to its terms and conditions, and make the bargaining unit employees whole for any losses they may have suffered as a result of his refusal to sign such agreement, backpay to be computed in accordance with the method stated in Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Ron Gass d/b/a Gass Concrete Contractors, Festus, Missouri, his officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the Union by failing and refusing to execute a written contract embodying the collective-bargaining agreement reached on terms and conditions of employment between the Union and the Associated General Contractors of St. Louis on October 9, 1989.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union as the exclusive representative of the unit employees and execute the written contract embodying the collective-bargaining agreement reached on terms and conditions of employment between the Union and the Associated General Contractors of St. Louis on October 9, 1989, and give retroactive effect to its terms and conditions, and make employees whole, with interest, in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at his facility in Festus, Missouri, copies of the attached notice marked "'Appendix.'"¹ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. December 11, 1990

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that I violated the National Labor Relations Act and has ordered me to post and abide by this notice.

I WILL NOT refuse to bargain in good faith with the Eastern Missouri Laborers District Council and Affiliated Locals 42, 53, and 110 by failing to execute a written contract embodying the terms of the collective-bargaining agreement reached between the Union and the Associated General Contractors of St. Louis on October 9, 1989.

I WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

I WILL, on request, bargain collectively with the Union as the exclusive representative of my employees and execute a written contract with the Union embodying the terms of the collective-bargaining agreement reached between the Union and the Associated General Contractors of St. Louis on October 9, 1989, and give retroactive effect to its terms and conditions, and make employees whole for any losses they may have suffered as a result of my failure to sign such agreement, with interest.

RON GASS d/b/a GASS
CONCRETE CONTRACTORS

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 611 North 10th Street, Suite 400, St. Louis, Missouri 63101-1932, Telephone 314--425--4361.